BEFORE THE

PUBLIC SERVICE COMMISSION of

SOUTH CAROLINA

DOCKET NOS. 2006-137-C, 2006-138-C, and 2006-139-C

IN RE: Docket No. 2006-137-C – Petition of Charter Fiberlink SC-CCO, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Chesnee Telephone Company, Inc. Concerning Interconnection Under the Communications Act of 1934, as Amended by the Telecommunications Act of 1996

and

Docket No. 2006-138-C - Petition of Charter Fiberlink SC-CCO, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with West Carolina Rural Telephone Cooperative Concerning Interconnection Under the Communications Act of 1934, as Amended by the Telecommunications Act of 1996

and

Docket No. 2006-139-C - Petition of Charter Fiberlink SC-CCO, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Lockhart Telephone Company Concerning Interconnection Under the Communications Act of 1934, as Amended by the Telecommunications Act of 1996

RETURN TO PETITIONS OF CHARTER FIBERLINK SC – CCO, LLC FOR ARBITRATION WITH CHESNEE TELEPHONE COMPANY, LOCKHART TELEPHONE COMPANY, AND WEST CAROLINA RURAL TELEPHONE COOPERATIVE, INC.

Chesnee Telephone Company ("Chesnee"), Lockhart Telephone Company ("Lockhart"), and West Carolina Rural Telephone Cooperative, Inc. ("West Carolina") (collectively, the "RLECs") respectfully submit this Return to the Petitions for Arbitration filed by Charter FiberLink SC – CCO, LLC ("Charter"). On May 12, 2006, Charter filed Arbitration Petitions with respect to each of the RLECs that raised identical issues. The Petitions were subsequently consolidated by the Public Service Commission of South Carolina ("Commission") by Order No 2006-330. In the Petitions, Charter set forth twenty-eight (28) unresolved issues for arbitration. The following issues have been resolved by the Parties as of the date of filing this Petition: Issue Nos. 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, and 25. In addition, portions of Issue Nos. 26 and 27 have been resolved. Where portions of issues have been resolved, we have removed the "Disputed Language" associated with the resolved portions of the issue to simplify matters.

Many of the remaining unresolved issues are related and can be grouped conceptually. Notwithstanding, the issues will be addressed in the order in which they were presented by Charter. Additionally, while the RLECs do not necessarily agree with Charter's characterization or framing of the issue in all cases, to avoid confusion and for the convenience of the Commission we will use Charter's statement of the issue but will attempt to explain the true basis for the dispute in the discussion of the RLECs' position on the issue.

In presenting the disputed language throughout this document, language proposed by the RLECs is shown in **Bold** and language proposed by Charter is shown in ***Bold Underlined and Italic*** print.

The RLECs are being represented in this proceeding by the McNair Law Firm and JSI (telecommunications consultants). Copies of all pleadings in this matter should be provided to the following:

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DISCUSSION OF UNRESOLVED ISSUES

A. INTERCONNECTION

Issue No. 1

Issue: Under what circumstances should indirect interconnection and direct interconnection, respectively, be required pursuant to the Agreement? (Interconnection Attachment, §§ 2, 2.1 (as referenced by the ILEC), 2.1 (including subparts), 2.2, 2.2.1, 2.2.3 (as referenced by Charter Fiberlink))

RLEC Position: Indirect connections are allowed under the Act but are not required. The RLECs have proposed that Charter interconnect directly. Charter's request for interconnection under Section 251(a) and (b) cannot require an interconnection that is more restrictive than interconnection under Section 251(c).

Disputed Language:

2. ***Interconnection*** **Physical Connection**

2.1 The Parties shall exchange Local/EAS Traffic and ISPBound Traffic ***(collectively referred to from time to time hereafter as "Traffic")*** over ***either Indirect or*** Direct Interconnection Facilities ***or a Fiber Meet Point*** between their networks. The Parties agree to physically connect their respective networks***, directly or indirectly,*** so as to exchange such Local/EAS Traffic and ISP-Bound Traffic, with the Point of Interconnection (POI) ***as described below.*** **designated at ILEC's switch (XXXXXXXX).**

2.1 Indirect Interconnection

2.1.1 Either Party may deliver Local/EAS Traffic and ISP Bound Traffic indirectly to the other for termination through any carrier to which both Parties' networks are interconnected directly or indirectly. The Party originating the Local/EAS Traffic and ISP Bound Traffic shall bear all charges payable to the transiting carrier(s) for such transit services with respect to Local/EAS Traffic and ISP Bound Traffic and shall bear the cost of all

facilities necessary to deliver the Traffic to the transiting carrier.

2.1.2 Unless otherwise agreed, the Parties shall exchange all Traffic indirectly through one or more transiting carriers until the total volume of Traffic being exchanged between the Parties' networks exceeds the Crossover Volume (as hereinafter defined), at which time either Party may request the establishment of Direct Interconnection. Notwithstanding the foregoing, if either Party is unable to arrange for or maintain transit service for its originated Traffic upon commercially reasonable terms before the volume of Traffic being exchanged between the Parties' networks exceeds the Crossover Volume, that Party may unilaterally at its sole expense utilize one-way trunks(s) for the delivery of its originated Traffic to the other Party. For purposes of this Agreement, Crossover Volume means a total bi- directional volume of Local/EAS Traffic exceeding [XXXXX] minutes per month for three (3) consecutive months.

2.1.3 After the Parties have established Direct Interconnection between their networks, neither Party may continue to transmit its originated Traffic indirectly except on an overflow basis.

2.1.4 Traffic exchanged by the Parties indirectly through a transiting carrier shall be subject to the same reciprocal compensation as provided in Section 3.2. Nothing herein is intended to limit any ability of the terminating Party to obtain compensation from a transiting carrier for Traffic transmitted to the terminating Party through such transiting carrier.

2.2 Direct Interconnection

2.2 ***2.2.1 At such time as either Party requests Direct Interconnection as provided in Section*** 2.1.2**,** Direct Interconnection Facilities between the Parties' networks shall be ***established.*** **provisioned** ***The Direct Interconnection Facilities shall be provisioned*** as two-way interconnection trunks**,** ***where technically feasible***. ***The POI is the location***

where one Party's operational and financial responsibility begins, and the other Party's operational and financial responsibility ends. Each Party will be financially responsible for all facilities and traffic located on its side of the POI except as otherwise stated herein. If the Parties agree to two-way trunk groups to exchange Traffic, they will mutually coordinate the provisioning and quantity of trunks. To the extent that the Parties are unable to agree upon the provisioning and quantity of two-way trunks, each Party shall use one-way trunks to deliver its originated Traffic to the other Party. The supervisory signaling specifications, and the applicable network channel interface codes for the ***Direct*** **dedicated *I*interconnection *F*facilities**, are the same as those used for Feature Group D Switched Access Service, as described in ILEC's applicable Switched Access Services tariff.

2.2.3 The Parties shall endeavor to establish the location of the POI by mutual agreement. Until the POI for Direct Interconnection is determined the Parties shall continue to exchange Traffic Indirectly. In selecting the POI, both Parties will act in good faith and select a point that is reasonably efficient for each Party. If the Parties are unable to agree upon the location of the POI, then the POI shall be determined pursuant to the Dispute Resolution provisions of this Agreement.

Discussion:

The RLECs generally seek a direct interconnection with all connecting carriers and have established direct interconnection in all of their traffic exchange agreements. Direct interconnection is the only type of interconnection that RLECs are required to enter into. RLECs may voluntarily agree to establish indirect interconnection under 251(a) of the Act.

The composition of Section 251 of the Act is hierarchical in nature. Section 251 "create[s] a three-tiered hierarchy of escalating obligations based on the type of carrier

involved."[1] Section 251(a) sets out the most general terms. These requirements apply to all telecommunications carriers. The duties are very general. Under Section 251(b) the scope narrows and becomes more restrictive. Section (b) applies only to local exchange carriers ("LECs"), including all incumbent LECs ("ILECs"), and competitive LECs ("CLECs"). Lastly, Section 251(c) has the most stringent obligations and applies only to ILECs. Based on this hierarchy, a Section 251(a) obligation for an ILEC could never be more restrictive than a 251(c) obligation.

Section 251(c) identifies the most stringent type of interconnection that is required of an ILEC. Charter requested interconnection under Section 251(a) and, therefore, Charter's rights under Section 251(c) are not at issue in this arbitration. Under Section 251(a), Charter can request either a direct or indirect interconnection. However, Charter cannot require indirect interconnection, because that would be more restrictive than a request for direct interconnection under 251(c). Therefore, while the RLECs can voluntarily agree to an indirect connection, they are not required to do so. It is up to the carriers to determine the method of interconnection under Section 251(a).

The RLECs do not dispute the fact that indirect interconnection may be a viable method of interconnection for many carriers. Carriers that are listed in the LERG as tandem providers, such as BellSouth Telecommunications, Inc., have many carriers that connect to each other via the tandem to exchange traffic. However, such tandem providers expect to be paid for providing that function. BellSouth, for example, has included transit charges in its interconnection agreements with other carriers and has implemented a tariff to cover these charges for transit service. However, the fact that

[1] *Total Telecommunications Services, Inc., and Atlas Telephone Company, Inc., v. AT&T Corporation*, 16 F.C.C.R. 5726 (Mar. 13, 2001) (*Atlas II).*

calls can be completed utilizing an indirect connection does not mean that indirect connections are required. In addition, Charter's position mischaracterizes the language in Section 2.4 of the Interconnection Attachment as indicating the Parties' agreement on indirect interconnection. Section 2.4 of the Interconnection Attachment does not indicate any such agreement, but instead only deals with a specific situation in which direct interconnection has been established, and provides that both parties will route calls over such direct interconnection except in the cases of emergency, blockage, or temporary equipment failure. Charter further argues that because there are existing common trunks between the RLECs and the BellSouth tandem that indirect connection is viable. Again, just because indirect connection may be possible does not mean it is required. In fact, the common trunks were originally established between the RLECs and BellSouth for the purpose of completing toll traffic. These trunks were not initially established for the purpose of completing local/EAS traffic. For EAS traffic, there are direct trunks between the RLEC end office and the other ILEC end offices. Local/EAS traffic between the RLEC and CMRS carriers who have agreements is also exchanged over direct trunks.

Utilizing indirect trunks via the BellSouth tandem is especially inappropriate for West Carolina and Lockhart because their NPA-NXXs are not even homed on the BellSouth tandem. For these RLECs, routing traffic via the BellSouth tandem is not recognized as a proper routing arrangement in the Local Exchange Routing Guide ("LERG"), which is the national database for routing of calls. Such disregard for compliance with nationally recognized routing procedures should not be condoned.

For these reasons, the Commission should reject Charter's proposed language on indirect interconnection.

However, if the Commission were to mandate an indirect connection initially, the Commission should at the same time set a minute of use ("MOU") threshold for establishing a direct connection. In addition, such MOU threshold should be set at a reasonable level. The RLECs believe that a reasonable direct connection threshold would be met when the average total two-way traffic over a three (3) consecutive month period exceeds 100,000 MOU per month.

Issue No. 2

Issue:	Which party should bear the costs of transiting traffic? (Interconnection Attachment, §§ 2.1.1, 2.1.2, 3.2.3 (all sections referenced use Charter Fiberlink's numbering))
RLEC Position:	RLECs are only required to pay for their originated traffic to the POI between the networks of the two interconnecting carriers. The POI must be within the RLECs network. The only carrier that may bill or collect a transit charge is a carrier that has a tandem listed in the LERG.
Disputed Language:	***2.1 Indirect Interconnection***
	2.1.1 Either Party may deliver Local/EAS Traffic and ISP Bound Traffic indirectly to the other for termination through any carrier to which both Parties' networks are interconnected directly or indirectly. The Party originating the Local/EAS Traffic and ISP Bound Traffic shall bear all charges payable to the transiting carrier(s) for such transit services with respect to Local/EAS Traffic and ISP Bound Traffic and shall bear the cost of all facilities necessary to deliver the Traffic to the transiting carrier.
	2.1.2 Unless otherwise agreed, the Parties shall exchange all Traffic indirectly through one or more transiting carriers until the total volume of Traffic being exchanged between the Parties' networks

exceeds the Crossover Volume (as hereinafter defined), at which time either Party may request the establishment of Direct Interconnection. Notwithstanding the foregoing, if either Party is unable to arrange for or maintain transit service for its originated Traffic upon commercially reasonable terms before the volume of Traffic being exchanged between the Parties' networks exceeds the Crossover Volume, that Party may unilaterally at its sole expense utilize one-way trunks(s) for the delivery of its originated Traffic to the other Party. For purposes of this Agreement, Crossover Volume means a total bidirectional volume of Local/EAS Traffic exceeding [XXXXX] minutes per month for three (3) consecutive months.

3.2.3 If ***either*** **a** Party provides ***T*****t**ransit to the other, **t**he Party providing the transiting switching function shall bill the originating Party for its originated Transit Traffic that is routed to the transiting provider for delivery to a third party**, where the switch homing arrangement for NPA/NXX is designated as the transiting Party's tandem switch per the Local Exchange Routing Guide (LERG)**. The rate for Transit Traffic is listed in the Pricing Attachment of this Agreement. ***Each Party*** **CLEC** is responsible for negotiating any necessary interconnection arrangements directly with the third party. ***The Party providing the Transit Service*** **ILEC** will not be responsible for any reciprocal compensation payments to ***the originating Party*** **CLEC** for Transit Traffic. Any Transit Traffic that is toll shall be governed by the ***transit provider's*** **ILEC's** access tariffs.

Discussion:

As stated in Issue 1, there is no requirement for the RLECs to connect indirectly with Charter via a third party.

As an initial matter, Charter's proposed language expands the definition of what should be considered transit traffic under this Agreement. For the purpose of this Agreement, the RLECs define transit traffic as traffic that is routed though a tandem that

is listed in the publicly available LERG and does not terminate to the tandem provider's end user customers. This definition is narrow in scope because it is used in the Agreement to define when a transit charge would be owed to one of the Parties to this Agreement. This language is in Section 3.2.3 of the Interconnection Attachment. The RLECs do not believe they are required to pay Charter a transit charge if Charter is not a publicly listed tandem provider that transits calls to a third party whose NPA-NXX is homed on its tandem. Based on this definition, only West Carolina would be entitled to charge transit charges under this Agreement. Neither Charter, Lockhart nor Chesnee currently has a tandem listed in the LERG. The RLECs believe this limited scope of transit traffic that is specifically addressed in the Agreement should be retained.

Charter proposes a very broad definition of Transit traffic and has coupled this definition with sweeping obligations of originating carriers to pay third parties that are not parties to this Agreement. Charter's definition includes any carrier that may touch any portion of the call between the RLEC and Charter. Based on Charter's definition, a transit provider could provide transport or switching, would not need to be listed in any public database, and does not even have to be a telecommunications carrier. Charter further states that there may be several transit providers between the RLEC switch and the Charter switch, and wants the RLECs to commit to pay charges to the unnamed carriers. The RLECs strongly object to committing to make any payments to an unknown carrier that is not a party to this Agreement.

The RLECs believe the underlying driver for the broad definition of transit traffic is because Charter wants the RLECs to pay BellSouth transit charges if the Parties interconnect indirectly. As Stated in Issue 1, the RLECs are not required to connect

indirectly. The maximum requirement for the RLEC is to interconnect at a Point of Interconnection ("POI") within the RLEC network. See Section 251(c)(2)(B) of the Act. Even if an indirect connection were required, the POI location would identify where the financial responsibility of one carrier begins and the other ends. Since the POI must be on the RLEC network, a third party tandem will never be on the RLEC side of the POI. The RLECs' delivery of traffic to and from the POI meets their obligations under 47 CFR 51.703(b). Thus, the RLECs are not required to pay any transit charges to third parties for Local/EAS traffic, and Charter should agree to be responsible for any such transit charges assessed outside the RLECs' networks.

Issue No. 3

Issue:	If the parties interconnect their networks directly, where should the POI be located? (Interconnection Attachment, §§ 2, 2.1 (as referenced by the ILEC), 2.2, 2.2.1, 2.2.3, 2.3, 2.3.3, 2.3.3.1, 2.3.3.3, 2.3.3.4, 2.3.3.7 (as referenced by Charter Fiberlink))
RLEC Position:	The point of interconnection ("POI") must be located within the RLEC network. An out-of-service POI is not required under Section 251(c)(2) therefore the less burdensome Section 251(a) could not require an out of service area POI. The POI should be specifically identified in this Agreement and not be left open to a future disputed between the parties.
Disputed Language:	2. ***Interconnection*** **Physical Connection** **2.1** The Parties shall exchange Local/EAS Traffic and ISPBound Traffic ***(collectively referred to from time to time hereafter as "Traffic")*** over ***either Indirect or*** Direct Interconnection Facilities ***or a Fiber Meet Point*** between their networks. The Parties agree to physically connect their respective networks***, directly or indirectly,*** so as to exchange such Local/EAS Traffic and ISP-Bound Traffic, with the Point of Interconnection (POI) ***as described***

below. **designated at ILEC's switch (XXXXXXXX).**

2.2 Direct Interconnection

2.2 ***2.2.1 At such time as either Party requests Direct Interconnection as provided in Section*** 2.12**,** Direct Interconnection Facilities between the Parties' networks shall be ***established.*** **provisioned** ***The Direct Interconnection Facilities shall be provisioned*** as two-way interconnection trunks**,** ***where technically feasible. The POI is the location where one Party's operational and financial responsibility begins, and the other Party's operational and financial responsibility ends. Each Party will be financially responsible for all facilities and traffic located on its side of the POI except as otherwise stated herein. If the Parties agree to two-way trunk groups to exchange Traffic, they will mutually coordinate the provisioning and quantity of trunks. To the extent that the Parties are unable to agree upon the provisioning and quantity of two-way trunks, each Party shall use one-way trunks to deliver its originated Traffic to the other Party.*** The supervisory signaling specifications, and the applicable network channel interface codes for the ***Direct*** **dedicated *I*i**nterconnection ***F*f**acilities, are the same as those used for Feature Group D Switched Access Service, as described in ILEC's applicable Switched Access Services tariff.

2.2.3 The Parties shall endeavor to establish the location of the POI by mutual agreement. Until the POI for Direct Interconnection is determined the Parties shall continue to exchange Traffic Indirectly. In selecting the POI, both Parties will act in good faith and select a point that is reasonably efficient for each Party. If the Parties are unable to agree upon the location of the POI, then the POI shall be determined pursuant to the Dispute Resolution provisions of this Agreement.

2.4 ***2.3 Direct*** **Physical** Interconnection

2.4 ***2.3.3*** Fiber Meet Point

2.4.2.1 ***2.3.3.1*** Fiber Meet Point is an interconnection arrangement whereby the Parties physically interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at ***a Fiber Meet POI*** **an interconnection point**. The location where one Party's facilities, provisioning, and maintenance responsibility begins and the other Party's responsibility ends is at the POI.

2.4.2.2 ***2.3.3.3 Each Party*** **CLEC** shall, wholly at its own expense, procure, install and maintain the agreed-upon SONET equipment ***on its side of the POI*** **in the CLEC Central Office or equipment site**.

2.4.2.3 ***2.3.3.4 The Parties shall agree upon and*** **ILEC shall** designate a POI **within the borders of the ILEC Exchange Area** as a Fiber Meet Point, and ***ILEC*** shall make all necessary preparations to receive, and to allow and enable CLEC to deliver, fiber optic facilities into the POI with sufficient spare length to reach the fusion splice point at the ***Fiber Meet*** POI.

2.4.2.6 ***2.3.3.7*** Each Party will be responsible for providing its own transport facilities to the Fiber Meet ***POI*** **Point**.

Discussion:

The hierarchical nature of Section 251 of the Act as previously discussed in Issue 1 as it relates to direct and indirect interconnection also applies to the location of the POI. Section 51.305(a) of the FCC's Rules, which implements Section 251(c)(2), states, "[a]n incumbent LEC shall provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the incumbent LEC's network . . . (2) at any technically feasible point within the incumbent LEC's network . . ." According to the FCC's findings, Section 251(a), which applies to all telecommunications carriers, including ILECs, cannot be more burdensome than 251(c). Consequently, Section 251(a)

cannot require an out-of-service-area POI. Consequently, the language in the Agreement must define the POI as located within the RLEC network.

A different arrangement may be negotiated if both parties mutually agree. That is obviously not the case here. Even if the Parties were to mutually agree to an indirect connection, Charter seems to suggest that it is not required to specify a POI with an indirect connection. This is simply not the case. In addition to identifying the physical connection point, the POI defines where each Party's financial responsibility ends. This point must be defined in the Agreement, regardless of whether the interconnection is direct or indirect.

Lastly, based on Charter's position, it wants to defer the determination of the location of the POI. The location of the POI is a critical point of the interconnection Agreement because it defines the financial implications of this Agreement for the Parties, and the financial burdens the RLEC is undertaking by signing the Agreement. This critical issue needs to be resolved in the interconnection agreement and not left to some future date.

The RLECs have suggested that the POI be defined at the RLEC switch location. Charter has not proposed any alternative during negotiations. The RLECs are willing to discuss other potential POI locations as long as the location of the POI is within the RLEC network.

Issue No. 4

Issue:	If either party is unable to arrange for or maintain transit service for the originated traffic, or if the parties are unable to agree upon the provisioning and quantity of two-way trunks, shall one-way trunks be

used by a party to deliver its originated traffic to the other party? (Interconnection Attachment, §§ 2.1.2, 2.2, 2.2.1 (all sections referenced use Charter Fiberlink's numbering)

RLEC Position: As discussed in Issues 1 and 2, the RLECs do not agree that they are required to interconnect indirectly. The Parties have already agreed to pay for the facilities on each Party's side of the POI (as long as the POI is on the RLEC network).

Payment for the facility on either side of the POI applies in either a one-way or two-way trunking arrangement.

Disputed Language:

2.1.2 Unless otherwise agreed, the Parties shall exchange all Traffic indirectly through one or more transiting carriers until the total volume of Traffic being exchanged between the Parties' networks exceeds the Crossover Volume (as hereinafter defined), at which time either Party may request the establishment of Direct Interconnection. Notwithstanding the foregoing, if either Party is unable to arrange for or maintain transit service for its originated Traffic upon commercially reasonable terms before the volume of Traffic being exchanged between the Parties' networks exceeds the Crossover Volume, that Party may unilaterally at its sole expense utilize one-way trunks(s) for the delivery of its originated Traffic to the other Party. For purposes of this Agreement, Crossover Volume means a total bidirectional volume of Local/EAS Traffic exceeding [XXXXX] minutes per month for three (3) consecutive months.

2.2 Direct Interconnection

2.2 ***2.2.1 At such time as either Party requests Direct Interconnection as provided in Section*** 2.1.2**,** Direct Interconnection Facilities between the Parties' networks shall be ***established.*** **provisioned** ***The Direct Interconnection Facilities shall be provisioned*** as two-way interconnection trunks**,** ***where technically feasible. The POI is the location where one Party's operational and financial responsibility begins, and the other Party's***

operational and financial responsibility ends. Each Party will be financially responsible for all facilities and traffic located on its side of the POI except as otherwise stated herein. If the Parties agree to two-way trunk groups to exchange Traffic, they will mutually coordinate the provisioning and quantity of trunks. To the extent that the Parties are unable to agree upon the provisioning and quantity of two-way trunks, each Party shall use one-way trunks to deliver its originated Traffic to the other Party. The supervisory signaling specifications, and the applicable network channel interface codes for the ***Direct*** **dedicated *I*interconnection *Ff*acilities, are the same as those used for Feature Group D Switched Access Service, as described in ILEC's applicable Switched Access Services tariff.

Discussion:

The RLEC position on the direct and indirect connection and the location of the POI has been discussed in Issues 1, 2 and 3. The RLECs are not required to indirectly connect with Charter. The most stringent requirement is for each RLEC to establish a POI within the RLEC's network. Because tandems or third party networks are not on the RLEC side of the POI, it is Charter's responsibility to establish terms for third party transit fees if an indirect connection were to be established.

The RLECs did not address one-way trunks in the proposed Agreement. Although one-way trunks are not as efficient as two-way trunks, the RLECs do not object to establishing one-way trunks to the POI on the RLEC network. Charter's suggested language in Section 2.2.1 above would be modified as shown below:

> Each Party will be financially responsible for all facilities and traffic located on its side of the POI ~~except as otherwise stated herein~~. If the Parties agree to two-way trunk groups to exchange Traffic, they will mutually coordinate the provisioning and quantity of trunks. To the extent that the Parties are unable to agree upon the provisioning and quantity of two-way trunks, each Party shall use one-way trunks to deliver its originated Traffic to the ~~other Party~~POI.

The Parties have agreed that each Party's financial responsibility ends at the POI. (The RLECs' agreement to this point is subject to the POI being located on the RLEC network.) The POI that determines the financial responsibility is not conditioned on the direction of the interconnection trunks. If Charter does not like the quantity of trunks provisioned it would have the option of provisioning one-way trunks. However, the POI for these trunks would be the same regardless of whether the trunks are one-way or two-way trunks.

The RLECs want to resolve in this interconnection Agreement any interconnection, pricing, and cost-sharing issues that are likely to arise between the Parties. Charter suggests that a POI does not have to be determined if there is an indirect connection. The RLECs disagree. The POI is the location where one Party's financial responsibility ends and the other Party's begins. Charter presumably believes that if a POI is not specified, it will be located either at the third party tandem switch or at the Charter switch by default. The RLECs have a right to a POI on the RLEC network and will not agree to a POI outside their network. The RLECs believe that this arbitration should resolve the issues at hand for the duration of the Agreement so there is no need for further contention in the relationship that would require protracted negotiations and possible formal dispute resolution.

Issue No. 5

Issue:	If Charter Fiberlink elects to establish a Fiber Meet Point, should the location of the interconnection point, designated as a fiber meet POI, be determined by agreement of the parties? (Interconnection Attachment, §§ 2.3.3, 2.3.3.1, 2.3.3.4, 2.3.3.7 (all sections referenced use Charter Fiberlink's numbering))

RLEC Position: The Fiber Meet Point can be at a mutually agreeable location on the RLEC network. The term to be used is the Fiber Meet Point which is an industry term and not a Fiber Meet POI.

Disputed Language:

2.4 ***2.3.3 Fiber Meet Point***

2.4.2.1 ***2.3.3.1*** Fiber Meet Point is an interconnection arrangement whereby the Parties physically interconnect their networks via an optical fiber interface (as opposed to an electrical interface) at ***a Fiber Meet POI*** **an interconnection point**. The location where one Party's facilities, provisioning, and maintenance responsibility begins and the other Party's responsibility ends is at the POI.

2.4.2.3 ***2.3.3.4 The Parties shall agree upon and*** **ILEC shall** designate a POI **within the borders of the ILEC Exchange Area** as a Fiber Meet Point, and ***ILEC*** shall make all necessary preparations to receive, and to allow and enable CLEC to deliver, fiber optic facilities into the POI with sufficient spare length to reach the fusion splice point at the ***Fiber Meet*** POI.

2.4.2.6 ***2.3.3.7*** Each Party will be responsible for providing its own transport facilities to the Fiber Meet ***POI*** **Point**.

Discussion:

The location of the Fiber Meet Point can be mutually agreed upon as long as the Fiber Meet Point is located on the RLEC network. The location of the POI and corresponding financial responsibilities of the RLECs have been discussed in Issues 1, 2, 3 and 4. The most stringent obligation that can be imposed on an RLEC is to have a POI on the RLEC network.

The proper term to be used in the agreement is "Fiber Meet Point" and not "Fiber Meet POI." It is possible to have several POIs in an interconnection arrangement. For

example, a CLEC may initially use third party facilities to connect with the ILEC. As the CLEC network grows they may add a Fiber Meet Point as a second interconnection location without removing the initial POI. Therefore, the Fiber Meet Point is not the only POI, and it could be confusing to use the term "POI" to indicate the Fiber Meet Point location. The RLECs prefer to use the term "Fiber Meet Point" which is more commonly used to describe the connection. The term "Fiber Meet POI" is not the common term used in the industry and could cause confusion.

Issue No. 6

Issue:	Should the parties bear their respective costs for interconnection on their respective sides of the POI, and if the ILEC is required or requested to build new facilities, which party should bear the costs of construction, and under what circumstances? (Interconnection Attachment, §§ 2, 2.1 (as referenced by the ILEC), 2.2, 2.2.1, 2.3.3.3, 2.3.3.4, 2.3.3.7, 2.6 (as referenced by Charter Fiberlink), 3.1.1, 3.1.2, 3.1.3)
RLEC Position:	RLEC is not required to build additional facilities to accommodate CLEC connections. If Charter requests additional facilities to be constructed, Charter should bear those costs.
Disputed Language:	2. ***Interconnection*** **Physical Connection** **2.1** The Parties shall exchange Local/EAS Traffic and ISP-Bound Traffic ***(collectively referred to from time to time hereafter as "Traffic")*** over ***either Indirect or*** Direct Interconnection Facilities ***or a Fiber Meet Point*** between their networks. The Parties agree to physically connect their respective networks***, directly or indirectly,*** so as to exchange such Local/EAS Traffic and ISP-Bound Traffic, with the Point of Interconnection (POI) ***as described below.*** **designated at ILEC's switch (XXXXXXXX).**

2.2 Direct Interconnection

2.2 ***2.2.1 At such time as either Party requests Direct Interconnection as provided in Section*** 2.1.2**,** Direct Interconnection Facilities between the Parties' networks shall be ***established.*** **provisioned** ***The Direct Interconnection Facilities shall be provisioned*** as two-way interconnection trunks**,** ***where technically feasible. The POI is the location where one Party's operational and financial responsibility begins, and the other Party's operational and financial responsibility ends. Each Party will be financially responsible for all facilities and traffic located on its side of the POI except as otherwise stated herein. If the Parties agree to two-way trunk groups to exchange Traffic, they will mutually coordinate the provisioning and quantity of trunks. To the extent that the Parties are unable to agree upon the provisioning and quantity of two-way trunks, each Party shall use one-way trunks to deliver its originated Traffic to the other Party.*** The supervisory signaling specifications, and the applicable network channel interface codes for the ***Direct*** **dedicated *I*i**nterconnection ***F*f**acilities, are the same as those used for Feature Group D Switched Access Service, as described in ILEC's applicable Switched Access Services tariff.

2.4.2.2 ***2.3.3.3 Each Party*** **CLEC** shall, wholly at its own expense, procure, install and maintain the agreed-upon SONET equipment ***on its side of the POI*** **in the CLEC Central Office or equipment site**.

2.4.2.3 ***2.3.3.4 The Parties shall agree upon and*** **ILEC shall** designate a POI **within the borders of the ILEC Exchange Area** as a Fiber Meet Point, and ***ILEC*** shall make all necessary preparations to receive, and to allow and enable CLEC to deliver, fiber optic facilities into the POI with sufficient spare length to reach the fusion splice point at the ***Fiber Meet*** POI.

2.4.2.6 ***2.3.3.7*** Each Party will be responsible for providing its own transport facilities to the Fiber Meet ***POI*** **Point**.

2.7 ***2.6*** If CLEC's request***s*** **requires** ILEC to build new facilities (e.g. installing new fiber) ***on CLEC's side of the POI***, CLEC will bear the cost of construction. Payment terms for such costs will be negotiated between the Parties on an individual case basis. No Party will construct facilities that require the other Party to build unnecessary facilities.

3.1.1 For Direct Interconnection Facilities, CLEC may (i) ***provide its own facilities, (ii)*** utilize a Fiber Meet Point, ***(iii)*** lease facilities from ILEC or ***(iv)*** lease facilities from a third party**,** to reach the POI.

3.1.2 If CLEC chooses to lease Direct Interconnection Facilities from the ILEC to reach the POI, CLEC shall compensate ILEC for such leased Direct Interconnection Facilities used for the transmission and routing of telephone exchange service and exchange access service between the Parties and to interconnect with ILEC's network at the rates contained in the Pricing Attachment***, or if not therein, at ILEC's tariffed rates***.

3.1.3 Each Party shall be responsible for the cost of Direct Interconnection Facilities on its side of the POI. ***Each Party has the obligation to install and maintain the appropriate trunks, trunk ports and associated facilities on its respective side of the POI and is responsible for bearing its costs for such trunks, trunk ports and associated facilities on its side of the POI.***

Discussion:

The availability of interconnection facilities is similar to the RLEC requirement to provide tariffed elements. The services are available "where facilities exist." The RLECs are not required to incur special construction costs to accommodate Charter's interconnection.

The RLECs have agreed to bear the cost of construction of the fiber terminals and switch port terminations associated with the interconnection trunks. However, the

RLECs are not required to bear the costs of special construction of fiber facilities to accommodate interconnection with Charter. If a Fiber Meet Point is selected that requires special construction, Charter should bear the cost of that construction.

Issue No. 7

Issue:	Is an interconnecting party using direct interconnection facilities entitled to provide its own facilities for interconnection, and, if a party chooses to lease facilities for interconnection from the other party, what should be the price of such facilities? (Interconnection Attachment, §§ 3.1.1, 3.1.2, 3.1.3)
RLEC Position:	Charter can use its own facilities to interconnect with the RLECs, but the Fiber Meet Point is the only method under which Charter can provide its own facilities under the Agreement. If Charter purchases facilities from the RLEC the rates should be the RLEC's company-specific intrastate access tariff rates.
Disputed Language:	3.1.1 For Direct Interconnection Facilities, CLEC may ***(i) provide its own facilities, (ii)*** utilize a Fiber Meet Point, ***(iii)*** lease facilities from ILEC or ***(iv)*** lease facilities from a third party**,** to reach the POI. 3.1.2 If CLEC chooses to lease Direct Interconnection Facilities from the ILEC to reach the POI, CLEC shall compensate ILEC for such leased Direct Interconnection Facilities used for the transmission and routing of telephone exchange service and exchange access service between the Parties and to interconnect with ILEC's network at the rates contained in the Pricing Attachment***, or if not therein, at ILEC's tariffed rates***. 3.1.3 Each Party shall be responsible for the cost of Direct Interconnection Facilities on its side of the POI. ***Each Party has the obligation to install and maintain the appropriate trunks, trunk ports and associated facilities on its respective side of the POI and is responsible for bearing its costs for such trunks, trunk ports and associated facilities on its side of the POI.***

Discussion:

The ability of Charter to provision its own facilities is already accommodated in the Fiber Meet Point language in the Interconnection Attachment. This language allows Charter to directly interconnect the fiber facilities of Charter with the RLEC fiber. The RLECs want the Agreement to specify the type of facilities that are permitted under this Agreement. The RLECs do not want to be forced into a facilities meet point on outdated copper facilities. Therefore, the current language proposed by the RLECs accurately reflects not only that Charter may use its own facilities; but also defines the type of facilities to be used.

If Charter does lease facilities from an RLEC, the pricing for such facilities would be listed in the Pricing Attachment to the Agreement. The RLECs initially provided a blank Pricing Attachment during negotiations and were not able to provide the actual pricing for each company. The RLECs have been working on a Pricing Attachment for the proposed Agreement and the prices will be based on the facility charges from each RLEC's intrastate access tariff. Based on Charter's position on Issue 7, it appears that the RLECs and Charter are in agreement that the pricing will either be listed in the Pricing Attachment or based on the RLEC tariffs.

Issue No. 8

Issue:	Should the Agreement state that compensation for traffic is for the transport and termination of such traffic and that the same compensation terms apply whether the parties exchange traffic directly or indirectly, and what should be the terms of compensation? (Interconnection Attachment, §§ 2.1.4, 3.2.1, 3.2.3 (§§ 2.1.4 and 3.2.3 use Charter Fiberlink's numbering))

RLEC Position: The Parties have agreed to a bill and keep arrangement for reciprocal compensation. The RLECs do not agree to an indirect connection; however, if the POI is located on the RLEC network as required by the Act, there would be no transiting fees on the RLEC side of the POI.

Disputed Language:

2.1.4 Traffic exchanged by the Parties indirectly through a transiting carrier shall be subject to the same reciprocal compensation as provided in Section 3.2. Nothing herein is intended to limit any ability of the terminating Party to obtain compensation from a transiting carrier for Traffic transmitted to the terminating Party through such transiting carrier.

3.2.1 This Section 3.2 is expressly limited to the transport and termination of Local/EAS Traffic and ISP-Bound Traffic originated by and terminated to End User Customers of the Parties in this Agreement. Because such traffic is believed to be in balance, both Parties agree that compensation for ***the transport and termination of*** Local/EAS Traffic and ISP-Bound Traffic shall be ***on a Bill and Keep Basis*** in the form of the mutual exchange of services provided by the other Party with no minute of use billing related to **exchange** ***transport and termination*** of such ***T*****t**raffic issued by either Party.

3.2.3 If ***either*** **a** Party provides ***T*****t**ransit to the other, **t**he Party providing the transiting switching function shall bill the originating Party for its originated Transit Traffic that is routed to the transiting provider for delivery to a third party**, where the switch homing arrangement for NPA/NXX is designated as the transiting Party's tandem switch per the Local Exchange Routing Guide (LERG)**. The rate for Transit Traffic is listed in the Pricing Attachment of this Agreement. ***Each Party*** **CLEC** is responsible for negotiating any necessary interconnection arrangements directly with the third party. ***The Party providing the Transit Service*** **ILEC** will not be responsible for any reciprocal compensation payments to ***the originating Party***

CLEC for Transit Traffic. Any Transit Traffic that is toll shall be governed by the ***transit provider's*** **ILEC's** access tariffs.

Discussion:

Based on the Parties' assumption that the traffic between the Parties is in balance, the Parties have agreed upon a bill and keep reciprocal compensation arrangement.

There are two situations under this Agreement where there could be a transit carrier. The first is the situation where the Parties are indirectly connected and a third party carrier seeks to collect fees from the Parties to this Agreement. The second situation is where one of the Parties to this Agreement is providing a transiting function to the other Party.

As stated in Issue 1, the RLECs are not required to indirectly connect via a third party tandem. If the Commission does not require the indirect connection, the payment of transit charges to a third party is not an issue. However, if the Commission does force an indirect connection, the location of the POI would determine which Party to this Agreement would be responsible for the transiting charges. As discussed in Issues 3, 4 and 5, the Act requires the POI to be located within the RLEC's network. Because the third party tandem is outside the RLEC network, it would be on Charter's side of the POI.

Under Charter's proposed language, if Charter wants its traffic routed via a third party that is not a tandem provider, Charter can make the arrangements with that third party directly. If that is the case, the third party would not be a party to this Agreement, and there should not be obligations imposed on the RLECs with respect to such third party.

In the second situation, where one of the Parties to this Agreement has a tandem that is listed in the LERG to which other third parties are connected, the tandem provider can charge for providing a transit function. The RLECs believe the ability to charge for this transiting function should be limited to situations where the official routing of the call designates the tandem provider. Private arrangements that a party may have to provide switching functions for a third party are not part of this Agreement and should not impose costs on a Party to this Agreement without its knowledge or consent. For example, if Charter sold switching functions to another CLEC whose NPA-NXX was listed in the LERG as located on Charter's end office switch and the Bellsouth tandem, the RLEC who sent traffic on a direct trunk to Charter's end office switch could not be charged a transit charge by Charter. Additionally, in this situation, the RLECs do not want traffic from the third party CLEC to be routed to RLECs on the trunk groups provisioned with Charter as part of this Agreement.

Issue No. 9

Issue:	Should the Agreement contain a rate arbitrage section? (Interconnection Attachment, § 1.3 (including subparts))
RLEC Position:	The rate arbitrage language proposed by the RLECs is appropriate because it provides an incentive for both Parties to comply with the contract.
Disputed Language:	**1.3 Rate Arbitrage** **1.3.1 Rate Arbitrage Each Party agrees that it will not knowingly provision any of its services or the services of a third party in a manner that permits the circumvention of applicable switched access charges by the other Party ("Rate Arbitrage") and/or the utilization of the physical connecting arrangements described in this**

Agreement to permit the delivery to the other Party of traffic not covered under this Agreement through the POI on local interconnection trunks. This Rate Arbitrage includes, but is not limited to, third-party carriers, traffic aggregators, and resellers.

1.3.2 If any Rate Arbitrage and/or delivery of traffic not covered under this Agreement through the local interconnection trunks is identified, the Party causing such Rate Arbitrage also agrees to take all reasonable steps to terminate and/or reroute any service that is permitting any of that Party's End User Customers or any entity to conduct Rate Arbitrage or that permits the End User Customer or any entity to utilize the POI for the delivery or receipt of such excluded traffic through the local interconnection trunks. Notwithstanding the foregoing, if any Party is found to be in violation of this Section, until such time as the Rate Arbitrage or incorrect routing of traffic is resolved, that Party shall pay applicable access charges to the other Party. 1.3.3 If either Party suspects Rate Arbitrage from the other Party, the Party suspecting arbitrage ("Initiating Party") shall have the right to audit the other Party's records to ensure that no Rate Arbitrage and/or the delivery of traffic not covered under this Agreement is taking place. Both Parties shall cooperate in providing records required to conduct such audits. Upon request by ILEC, CLEC shall be required to obtain any applicable records of any customer or other third party utilizing CLEC's interconnection with ILEC. The Initiating Party shall have the right to conduct additional audit(s) if the preceding audit disclosed such Rate Arbitrage provided, however, that neither Party shall request an audit more frequently than is commercially reasonable once per calendar year.

Discussion:

A formal agreement or contract between two parties lays out the scope of the relationship and duties of each Party to such agreement or contract. It is common

practice to have language that includes incentives for the Parties to comply with all of the obligations of such agreement or contract. For example, if a company does not pay its bill on time, the billing party can charge interest on the unpaid amounts. The potential additional cost for paying a bill late provides the necessary incentive for the company to pay its bill on time. The rate arbitrage language proposed by RLECs provides a similar incentive. The proposed language simply states that if one carrier or carrier's customer misrepresents traffic as local traffic, then both carriers will work to immediately stop the practice and the offending carrier will pay appropriate access charges for the misrepresented traffic. This language applies equally to both Parties, and requires both Charter and the RLECs to comply with all jurisdictional rules to properly identify traffic.

Charter believes this language is not necessary because the Agreement is limited to Local/EAS traffic. The issue addressed in this section is where traffic may seem to be Local/EAS but is not. The RLECs believe there should be incentives to comply with the Agreement, and that the language should remain in the Agreement.

B. GENERAL TERMS AND CONDITIONS ("GT&C")

1. Information Service Traffic

Issue No. 10

Issue:	What traffic may be exchanged, and, if so, under what circumstances? (GT&C, §§ 1.2, 1.3)
RLEC Position:	**This issue has been resolved.**

2. Change of Law

Issue No. 11

Issue: When should a Change of Law be deemed to occur, for purposes of the Agreement? (GT&C, §§ 1.2, 28.2)

RLEC Position: **This issue has been resolved.**

3. Term of Agreement

Issue No. 12

Issue: What should be the term of the Agreement? (GT&C, §§ 2.1, 2.2 (including subparts), 3 (including subparts))

RLEC Position: **This issue has been resolved.**

4. Period to Negotiate Subsequent Agreement

Issue No. 13

Issue: What is the appropriate period for the parties to negotiate a subsequent Agreement? (GT&C, § 2.1)

RLEC Position: **This issue has been resolved.**

5. Assignment

Issue No. 14

Issue: What language should the Agreement contain regarding the obligation of transferees of any assignment of the Agreement to be bound by its terms? (GT&C, § 6)

RLEC Position: **This issue has been resolved.**

6. Billing

Issue No. 15

Issue: What are the appropriate charges to be paid for services and facilities provided under the Agreement? (GT&C, § 9.1)

RLEC Position: **This issue has been resolved.**

Issue No. 16

Issue: Should the parties be able to withhold payment of disputed amounts? (GT&C, § 9.2.1)

RLEC Position: **This issue has been resolved.**

Issue No. 17

Issue: What is the appropriate interest rate on amounts in dispute or otherwise unpaid? (GT&C, §§ 9.2.1, 9.3, 9.3.1)

RLEC Position:

The RLEC-proposed interest rate of 1 1/2 % per month is reasonable and is consistent with Commission Regulation 103-622.2 regarding late payment charges.

Disputed Language: 9.2.1 If any portion of an amount **due to a Party (the "Billing Party")** ***invoiced to a Billed Party*** under this Agreement is subject to a bona fide dispute between the Parties, the ***Billed*** Party ***may withhold payment of the disputed amount and*** **billed (the "Non-Paying Party")** shall, within **thirty (30)** ***sixty (60)*** days of its receipt of the invoice containing such disputed amount, give written notice to the Billing Party of the amount it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item.

The **Non-Paying *Billed*** Party shall pay when due all undisputed amounts ***on the invoice*** to the Billing Party. The Parties will work together in good faith to ***informally*** resolve issues relating to the disputed amounts. If the dispute is resolved such that payment is required, the **Non-Paying *Billed*** Party shall pay the disputed amounts with interest at the lesser of (i) **one and one-half percent (1-1/2%) *one percent (1%)*** per month or (ii) the highest rate of interest that may be charged under South Carolina's applicable law. In addition, the Billing Party may **cease *suspend*** terminating traffic for the **Non-Paying *Billed*** Party **after un *if* d*D***isputed **a*A***mounts ***resolved to be due to the Billing Party are*** not paid **become more than *within*** 90 days **past due *after they are determined to be due***, provided the Billing Party has given ***the Billed Party*** an additional 30-days written notice and opportunity to cure the default. ***If the dispute is resolved such that payment is not required, the Billing Party will issue the Billed Party a credit for the Disputed Amounts on its next invoice following the date of resolution of the dispute.***

9.3 Except for Disputed Amounts pursuant to Section 9.2 herein, the following shall apply:

9.3.1 Any undisputed amounts not paid when due shall accrue interest from the date such amounts were due at the lesser of (i) **one and one-half percent (1-1/2%) *one percent (1%)*** per month or (ii) the highest rate of interest that may be charged under South Carolina's applicable law.

Discussion:

The RLEC-proposed interest rate of 1 1/2 % per month is reasonable and is consistent with Commission Regulation 103-622.2 regarding late payment charges. It is important to keep in mind that this interest rate will be applied only when a Party disputes a bill and it is later determined that the bill should have been timely paid. The disputing Party should not have the ability to avoid proper Commission-approved late payment

charges by simply disputing the bill and paying less in interest than it would be required to pay in late payment charges.

Issue No. 18

Issue:	What is the appropriate period following the receipt of an invoice for a party to give written notice of a dispute? (GT&C, § 9.2.1)
RLEC Position:	**This issue has been resolved.**

Issue No. 19

Issue:	What is the appropriate language for the Agreement with regard to the refusal, suspension and discontinuance of service, and termination of the Agreement, if the billed party defaults on payment? (GT&C, §§ 3 (including subparts), 8, 9.2, 9.2.1, 9.3, 9.3.2, 9.3.3, 9.3.4, 9.3.5, 13.3)
RLEC Position:	**This issue has been resolved.**

Issue No. 20

Issue:	What language should the Agreement contain regarding the resolution of disputed paid amounts and refunds? (GT&C, §§ 9.4, 9.5)
RLEC Position:	**This issue has been resolved.**

Issue No. 21

Issue:	Where should audits be performed? (GT&C, § 9.6)
RLEC Position:	**This issue has been resolved.**

7. Confidential Information

Issue No. 22

Issue: Under what circumstances may a party receiving confidential information, as defined by the Agreement, from the other party be able to provide that information to the FCC, Commission, or other governmental authority? (GT&C, §§ 11.1, 11.2)

RLEC Position: This Agreement is not intended to dictate the Parties' legal obligations to provide information to the FCC, Commission, or other governmental authorities. The Parties have whatever obligations the law imposes in that respect, and Charter's proposed language is not necessary and is too broad. The Agreement sets forth the Parties' obligations with respect to each other, and that is properly captured in Section 11.2.

Disputed Language: 11.1 Any information such as specifications, drawings, sketches, business information, forecasts, models, samples, data, computer programs and other software, and documentation of one Party (a Disclosing Party) that is furnished or made available or otherwise disclosed to the other Party or any of its employees, contractors, or agents (its "Representatives" and with a Party, a "Receiving Party") pursuant to this Agreement ("Proprietary Information") shall be deemed the property of the Disclosing Party. Proprietary Information, if written, shall be clearly and conspicuously marked "Confidential" or "Proprietary" or other similar notice, and, if oral or visual, shall be confirmed in writing as confidential by the Disclosing Party to the Receiving Party within ten (10) days after disclosure. Unless Proprietary Information was previously known by the Receiving Party free of any obligation to keep it confidential, or has been or is subsequently made public by an act not attributable to the Receiving Party, or is explicitly agreed in writing not to be regarded as confidential, such information: (i) shall be held in confidence by each Receiving Party; (ii) shall be disclosed to only those persons who have a need for it in connection with the provision of

services required to fulfill this Agreement and shall be used by those persons only for such purposes; and (iii) may be used for other purposes only upon such terms and conditions as may be mutually agreed to in advance of such use in writing by the Parties. Notwithstanding the foregoing sentence, a Receiving Party shall be entitled to disclose or provide Proprietary Information as required by any governmental authority or applicable law, upon advice of counsel, only in accordance with Section 11.2 of this Agreement. ***Nothing herein shall prohibit or restrict a Receiving Party from providing information requested by the FCC or a state regulatory agency with jurisdiction over this matter, or to support a request for arbitration or an allegation of failure to negotiate in good faith.***

11.2 If any Receiving Party is required by any governmental authority, or by **a*A***pplicable **l*L***aw, to disclose any Proprietary Information, then such Receiving Party shall provide the Disclosing Party with written notice of such requirement as soon as possible and prior to such disclosure. The Disclosing Party may then seek appropriate protective relief from all or part of such requirement. ***The Receiving Party may disclose the Proprietary Information within the time required by the governmental authority or Applicable Law unless protective relief is obtained by the Disclosing Party.*** The Receiving Party shall use all commercially reasonable efforts to cooperate with the Disclosing Party in attempting to obtain any protective relief that such Disclosing Party chooses to obtain.

Discussion:

This Agreement is not intended to dictate the Parties' legal obligations to provide information to the FCC, Commission, or other governmental authorities. The Parties have whatever obligations the law imposes in that respect, and Charter's proposed language is not necessary. The Agreement sets forth the Parties' obligations to each other, and that is properly captured in Section 11.2. Furthermore, Charter's proposed

language in Section 11.1 is far too broad. Charter's proposed language would permit the Parties to evade their responsibility to protect each other's confidential information, because it would allow a Party to provide the other Party's confidential information to a "requesting" government entity, without regard to the validity of the request and whether or not there is a legal obligation to provide the requested information.

Issue No. 23

Issue:	Under what circumstances should documents not prepared solely for purposes of negotiation, but which are provided during the course of negotiations, be exempted from disclosure? (GT&C, § 13.1)
RLEC Position:	The limitation that documents must be prepared "solely" for purposes of the dispute negotiations in order to be entitled to confidential treatment is too restrictive. It is in the best interest of the Parties and in the public interest to encourage the mutual settlement of disputes, and the Parties should be able to engage in such negotiations and share appropriate documents without fear of public disclosure of proprietary information.
Disputed Language:	13.1 Informal Resolution of Disputes At the written request of a Party, each Party will appoint a knowledgeable, responsible representative, empowered to resolve such dispute, to meet and negotiate in good faith to resolve any dispute arising out of or relating to this Agreement. The location, format, frequency, duration, and conclusion of these discussions shall be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative dispute resolution procedures such as mediation to assist in the negotiations. Discussions and correspondence among the representatives for purposes of these negotiations shall be treated as Confidential Information developed for purposes of settlement, exempt from discovery, and shall not be admissible

in the arbitration described below or in any lawsuit without the concurrence of all Parties. Documents identified in or provided with such communications, which are not prepared ***solely*** for purposes of the negotiations **and not designated as Confidential Information,** are not so exempted and may, if otherwise discoverable, be discovered or otherwise admissible, be admitted in evidence, in the arbitration or lawsuit.

Discussion:

The limitation that documents must be prepared "solely" for purposes of the dispute negotiations in order to be entitled to confidential treatment is too restrictive. It is in the best interest of the Parties and in the public interest to encourage the mutual settlement of disputes, and the Parties should be able to engage in such negotiations and share appropriate documents without fear of public disclosure of proprietary information. Documentation provided in the course of settlement negotiations, like the negotiations themselves, should be protected from disclosure in any subsequent arbitration or lawsuit. RLECs have properly proposed that, in order to be entitled to such protection, the documents must be designated as Confidential Information and must have been prepared for purposes of the negotiations (although not necessarily solely for purposes of the negotiations.) RLECs' position is reasonable, and is in the best interest of both the Parties and the public in resolving disputes in an efficient and timely manner.

8. Indemnity

Issue No. 24

Issue: What is the appropriate language for the Agreement regarding indemnification? (GT&C, §§ 22.2 (including subparts), 22.3 (including subparts), 22.4)

RLEC Position: It is reasonable for the Parties to indemnify one another for copyright infringement arising from material transmitted over the indemnified party's facilities, as RLECs propose, and this concept is not covered elsewhere in the Agreement.

Charter's proposed expansion of the indemnification obligation to include claims for "invasion of privacy" arising from the content of communications is broad and vague.

The limitation on Consequential Damages in Section 22.2.1(3) is necessary. Similarly, Charter's reference to the indemnification obligation in Section 22.3.3 should not be included. The Parties should not be required to indemnify each other for speculative damages claimed by third persons when they would not be liable to one another for such damages, as clearly stated in Section 22.3.3.

Disputed Language: 22.2 Indemnification

22.2.1 Each Party (the "Indemnifying Party") shall indemnify and hold harmless the other Party ("Indemnified Party") from and against loss, cost, claim liability, damage, and expense (including reasonable attorney's fees) ***("Claims")*** to **customers** ***End-User Customers of the Indemnifying Party*** and other third **parties** ***persons*** for:

(1) damage to tangible personal property or for personal injury proximately caused by the negligence**, or** willful misconduct ***or intentional acts or omissions*** of the Indemnifying Party, its employees, agents or contractors; ***and***

(2) **claims for** libel, slander, or **infringement of copyright** ***invasion of privacy*** arising from the **material** ***content of communications*** transmitted over the Indemnified Party's facilities **arising from** ***by*** the Indemnifying Party**'s own communications** or **the communications of** its End User Customers; and

(3) claims for infringement of patents arising from combining the Indemnified Party's facilities or services with, or the using of the Indemnified Party's services or facilities in connection with, facilities of the Indemnifying Party. [*SEE SECTION 22.4 EXCLUDING INFRINGEMENT FROM INDEMNITY] A Party's indemnification obligations hereunder shall not be applicable to any Claims to the extent caused by, arising out of or in connection with the gross negligence, wilful misconduct or intentional acts or omissions of the Indemnified Party.* Notwithstanding this indemnification provision or any other provision in the Agreement, neither Party, nor its parent, subsidiaries, affiliates, agents, servants, or employees, shall be liable to the other for Consequential Damages as defined in Section 22.3.3 of this Agreement.

22.2.2 The Indemnified Party will notify the Indemnifying Party promptly in writing of any c*C*laims**, lawsuits, or demands** by ***End User*** c*C*ustomers or other third **parties** ***persons*** for which the Indemnified Party alleges that the Indemnifying Party is responsible under this Section, and, **if requested by the Indemnifying Party,** ***the Indemnifying Party*** will **tender** ***promptly assume*** the defense of such claim, lawsuit or demand.

(1) In the event the Indemnifying Party does not promptly assume or diligently pursue the defense of the tendered action, then the Indemnified Party**,** ***after no less than ten (10) days prior notice to the Indemnifying Party,*** may proceed to defend or settle said **action** ***Claim*** and the Indemnifying Party shall hold harmless the Indemnified Party from any loss, cost liability, damage and expense ***of such defense or settlement***.

(2) **In the event the Party otherwise entitled to indemnification from the other elects to decline such indemnification, then the Party making such an election may, at its own expense, assume defense and settlement of the claim, lawsuit or demand.** ***The Indemnifying Party shall consult with the Indemnified Party prior to undertaking any***

compromise or settlement of any Claims, and the Indemnified Party will have the right, at its sole option and discretion, to refuse any such compromise or settlement that (in the Indemnified Party's sole reasonable opinion) might prejudice the rights of the Indemnified Party, and, at the Indemnified Party's sole cost and expense, to take over the defense, compromise or settlement of such Claims; provided, however, that in such event the Indemnifying Party will neither be responsible for, nor will it be further obligated to indemnify the Indemnifying Party from or against, any Claims in excess of the amount of the refused compromise or settlement.

(3) The Parties will cooperate in every reasonable manner with the defense or settlement of any claim, demand, or lawsuit.

22.3 Limitation of Liability

22.3.1 ***Except for a Party's indemnification obligations under Section 22.2,*** **N*n***o liability shall attach to either Party, its parents, subsidiaries, affiliates, agents, servants, employees, officers, directors, or partners for damages arising from errors, mistakes, omissions, interruptions, or delays in the course of establishing, furnishing, rearranging, moving, terminating, changing, or providing or failing to provide services or facilities (including the obtaining or furnishing of information with respect thereof or with respect to users of the services or facilities) in the absence of gross negligence or willful misconduct.

22.3.2 Except as otherwise provided in Section 22, no Party shall be liable to the other Party for any loss, defect or equipment failure caused by the conduct ***or actions*** of the **first** ***other*** Party, its agents, servants, contractors or others acting in aid or concert with that Party, except in the case of gross negligence or willful misconduct.

22.3.3 ***Except for a Party's indemnification obligations under Section 22.2,*** **I*i***n no event shall either Party have any liability whatsoever to the other

Party for any indirect, special, consequential, incidental or punitive damages, including, but not limited to, loss of anticipated profits or revenues or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, "Consequential Damages"), even if the other Party has been advised of the possibility of such damages.

22.4 Intellectual Property

Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other based on or arising from any claim, demand, or proceeding by any third **party *person*** alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision or use of any facilities by either Party under this Agreement constitutes direct or contributory infringement, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any third party.

Discussion:

It is reasonable for the Parties to indemnify one another for copyright infringement arising from material transmitted over the indemnified party's facilities, as RLECs propose in Section 22.2.1(2). This is not covered by Section 22.4, as Charter asserts, because Section 22.4 relates only to the Parties' use of the facilities themselves and not to material or the content of communications transmitted over the facilities. Furthermore, Charter's proposed language expands indemnification to include claims for "invasion of privacy" arising from the content of communications. That provision is both broad and vague, and RLECs' language should be adopted. The language is mutual and applies equally to both Parties.

In addition, the limitation on Consequential Damages in Section 22.2.1(3) is necessary. Similarly, Charter's reference to the indemnification obligation in Section 22.3.3 should not be included. The Parties should not be required to indemnify each other for speculative damages claimed by third persons when they would not even be liable to one another for such damages, as clearly stated in Section 22.3.3.

9. Impairment of Service

Issue No. 25

Issue:	What terms and conditions should apply when a party interferes with or impairs the services, facilities or equipment of the other party? (GT&C, § 27)
RLEC Position:	**This issue has been resolved.**

10. Definitions and Other Issues Regarding Agreement Terms

Issue No. 26

Issue:	What are the appropriate definitions for use in the Agreement? (GT&C, Definitions §§ 2.14, 2.20, 2.23, 2.24, 2.27, 2.31, 2.33, 2.43, 2.45, 2.46, 2.48)
RLEC Position:	Definitions in the Glossary Sections 2.14, 2.23, 2.24, 2.27, 2.31, 2.33, 2.45 and 2.46 have been resolved. Section 2.20 is not really disputed; the specific RLEC name needs to be inserted once the Agreement is completed for each RLEC. The RLECs' definition of "Tandem Transit Traffic" in Section 2.43 is appropriate and should be adopted, for the reasons discussed in Issue No. 2 above. The RLECs' definition of "Telecommunications Traffic" is consistent with FCC rules and should be adopted.

Disputed Language:

2.43 TANDEM TRANSIT TRAFFIC OR TRANSIT TRAFFIC.

Telephone Exchange Service traffic that originates on CLEC's network, and is transported through an ILEC Tandem to the Central Office of CLEC, Interexchange Carrier, Commercial Mobile Radio Service ("CMRS") carrier, or other LEC, that subtends the relevant ILEC Tandem to which CLEC delivers such traffic. Subtending Central Offices shall be determined in accordance with and as identified in the Local Exchange Routing Guide ("LERG"). Switched Access Service traffic is not Tandem Transit Traffic. ***Tandem Transit Traffic or Transit Traffic means Local EAS Traffic and ISP Bound Traffic (i) that originates on one Party's network, transits through the other Party's network, and terminates to a third party Telecommunications Carrier's network, or (ii) that originates on a third party's network, transits through one Party's network and terminates to the other Party's network.***

2.48 TELECOMMUNICATIONS TRAFFIC.

"Telecommunications Traffic" means Telecommunications **Tt**raffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider**, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access.** ***[TERM NEEDS TO BE BROADLY DEFINED HERE. WITHIN TEXT OF AGREEMENT LOCAL/EAS, ISP-BOUND, TOLL ETC. ARE SPECIFICALLY USED AS SUB-SETS OF "TELECOMMUNICATIONS TRAFFIC"]***

Discussion:

Glossary, Section 2.43 -- TANDEM TRANSIT TRAFFIC

See discussion of transit traffic in Issue No. 2 above. For the reasons discussed therein, RLECs believe their proposed definition of Tandem Transit Traffic is appropriate for purposes of this Agreement.

Glossary, Section 2.48 -- TELECOMMUNICATIONS TRAFFIC

RLECs have proposed the definition contained in 47 C.F.R. § 51.701(b)(1), which is the applicable definition with respect to the transport and termination of local traffic covered by this Agreement. Charter's proposal is to include traffic that is not properly considered telecommunications traffic. RLECs' proposed definition is consistent with FCC rules and should be adopted.

Issue No. 27

Issue:	Whether language used in the Agreement should be precise and specific, and consistent with the definitions used, so as to provide clarity and minimize disputes? (GT&C, 1st, 3rd, 4th and 5th Whereas clauses, §§ 1.2, 13, 14, 16, 26, 30, 31)
RLEC Position:	The Agreement should clearly state whether it is a traffic exchange agreement or an interconnection agreement between competing Parties. RLECs cannot agree to exclude "corporate franchise taxes" from the taxes that may be levied upon the purchasing Party, because there is no definition of "corporate franchise tax" and it is unclear how that term would be interpreted. Neither Party should be permitted to use the other's trademarks for any purposes.
Disputed Language:	WHEREAS, CLEC does not ***currently*** provide **service *Telecommunications Services*** in the ILEC's ***local*** service area, but the Parties exchange

Telecommunications **Tt**raffic between their networks and wish to establish an arrangement for the exchange of such traffic between their networks;

30. Taxes and Fees

Each Party purchasing services hereunder shall pay or otherwise be responsible for all federal, state, or local sales, use, excise, gross receipts, transaction or similar taxes, fees or surcharges levied against or upon such purchasing Party (or the providing Party when such providing Party is permitted to pass along to the purchasing Party such taxes, fees or surcharges), except for any tax on either Party's corporate existence, status or income ***or any corporate franchise taxes***. Whenever possible, these amounts shall be billed as a separate item on the invoice. To the extent a sale is claimed to be **for resale tax exemption** ***exempt from taxes***, the purchasing Party shall furnish the providing Party a proper resale ***or other*** tax exemption certificate as authorized or required by statute or regulation by the jurisdiction providing said resale ***or other*** tax exemption. Failure to provide **in a timely manner such sale for resale** ***the*** tax exemption certificate will result in no exemption being available to the purchasing Party ***until it is provided***. Corprate tax

31. Trademarks and Trade Names

No patent, copyright, trademark or other proprietary right is licensed, granted, or otherwise transferred by this Agreement. Each Party is strictly prohibited from any use, including, but not limited to, in sales, in marketing or in advertising of telecommunications services, of any name, copyrighted material, service mark, or trademark of the other Party. ***The Marks include those Marks owned directly by a Party or its Affiliate(s) and those Marks that a Party has a legal and valid license to use. The Parties acknowledge that they are separate and distinct and that each provides a separate and distinct service and agree that neither Party may, expressly or impliedly, state, advertise or market that it is or offers the same service as the other Party or engage in any other activity that may result in a likelihood of confusion***

between its own service and the service of the other Party. The foregoing shall not be construed to prohibit either Party from using the other Party's name and marks in comparative advertising so long as the reference is truthful and factual; is not likely to cause confusion, mistake or deception, and does not imply any agency relationship, partnership, endorsement, sponsorship, or affiliation by or with the other Party and provided that the other Party's name and marks appear in standard type, non-logo format.

Discussion:

Fourth Whereas Clause

The Scope of this Agreement was initially believed to be a traffic exchange agreement where the Parties were not in direct competition. The wording in the fourth "Whereas" clause is meant to document that understanding, and Charter's proposed language does nothing to clarify the relationship of the Parties. Over the course of negotiations, the RLECs became aware that Charter is serving some customers within the RLECs' service territories. Charter disputes this fact, and asserts that if it is providing service in RLECs' service areas it is only due to inaccuracies in Charter's database. The RLECs believe the Agreement should accurately reflect both Charter's intentions and actions. It is possible that inaccuracies in exchange boundary databases have caused the issues. Regardless of the cause, the RLECs seek to clearly define whether this Agreement covers Charter's service to customers inside the RLEC service territory or if the scope of the Agreement is limited to traffic exchange between non-competing carriers, as Charter initially requested.

Section 30 -- Corporate Franchise Tax

Charter is seeking to exclude "corporate franchise tax" from the list of fees and taxes the purchaser of services would have to pay. RLECs cannot agree to this because there is no definition of "corporate franchise tax" and it is unclear how that term would be interpreted. For example, telecommunications carriers in South Carolina may be subject to municipal franchise fees that they are entitled to pass through on their customer bills. RLECs do not believe it is the Parties' intent to prevent a Party from including on the bill a fee it is legally entitled to pass through. Therefore, the RLECs object to the exclusion of "corporate franchise tax" from items that the purchaser may be required to pay.

Section 31 -- Trade Marks and Trade Names

The RLECs can agree to the language proposed by Charter that limits use of each others' trademarks. However, the RLECs cannot agree to allow the use of their registered trademarks by others for any purposes, including "comparative advertising." Allowing such use would potentially jeopardize the integrity of the trademark and the holder's rights with respect to the trademark. Therefore, the RLECs strongly object to the last sentence of Charter's proposed language.

C. INTERIM TRAFFIC EXCHANGE ARRANGEMENT

Issue No. 28

Issue:	Pursuant to 47 C.F.R § 51.715, must the ILEC immediately enter into an interim traffic exchange arrangement, as requested by Charter Fiberlink, and should the Commission direct the ILEC to immediately execute and implement Exhibit C? (Exhibit C)

RLEC Position:

RLECs have no legal duty to enter into an interim "traffic exchange" agreement with Charter. 47 C.F.R. § 51.715 does not apply to RLECs, because each is a rural telephone company as defined in the Act. In any event, 47 C.F.R. § 51.715 only requires ILECs to transport and terminate traffic on an interim basis. RLECs are currently transporting and terminating Charter's traffic, and no written agreement is needed.

Disputed Language: All of Exhibit C, attached.

Discussion:

RLECs have no legal duty to enter into an interim "traffic exchange" agreement with Charter. As an initial matter, the regulation cited by Charter, 47 C.F.R. § 51.715, does not even apply to RLECs. The regulation relates to the obligations of *incumbent local exchange carriers* (ILECs). Obligations specific to ILECs arise from Section 251(c) of the Telecommunications Act of 1996 ("Act"). Each of the RLECs is a rural telephone company, as defined in Section 153(37) of the Act, and is currently exempt from Section 251(c) obligations, pursuant to Section 251(f)(1) of the Act. *See also* First Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (rel. August 8, 1996) ("Local Competition Order"), at para. 1068 (in the context of its discussion of interim transport and termination rates, the Federal Communications Commission stated it had considered the economic impact of the rules on small ILECs, and noted that "certain small incumbent LECs are not subject to our rules under section 251(f)(1) of the 1996 Act, unless otherwise determined by a state commission[.]").

Furthermore, even if 47 C.F.R. § 51.715 is applicable, RLECs are in full compliance with the regulation. 47 C.F.R. § 51.715 requires only that, under certain circumstances and where a requesting carrier does not have an existing interconnection arrangement, an incumbent local exchange carrier (ILEC) must *provide transport and termination* to the requesting carrier on an interim basis. RLECs are currently transporting and terminating Charter's traffic. Thus, a written "interim arrangement" is not needed.

Respectfully submitted,

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ATTORNEYS FOR CHESNEE TELEPHONE COMPANY, LOCKHART TELEPHONE COMPANY, AND WEST CAROLINA RURAL TELEPHONE COOPERATIVE, INC.

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